IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 228 of 2005

For Approval and Signature:

HON'BLE MR. JUSTICE M.D. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JITUBHAI BHURABHAI DARBAR

Versus

THE STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 228 of 2005

MR JM BUDDHBHATTI for Petitioner No. 1

Mr.K.P.Raval, A.P.P. for Respondent No. 1

Mr.R.D.Chauhan for respondent no.2.

CORAM : HON'BLE MR. JUSTICE M.D. SHAH

Date of decision: 03/05/2005

ORAL JUDGEMENT

Heard the learned Advocates for the parties.

1. Rule. Learned A.P.P. Mr. K.P.Raval waives service of rule on behalf of the respondent no.1 while

Mr.R.D.Chauhan waives service of rule on behalf of the respondent no.2.

1.1 With the consent of the learned Advocates of both sides, the matter is taken up for final hearing and disposal today.

2. This Criminal Revision Application filed under Section 397 read with Section 401 of the Criminal Procedure Code, 1973 is directed against the judgment and order dated 23-5-2001 passed by the 5th Jt.Civil Judge, Senior Division, & J.M.F.C., Nadiad in Criminal Case no.2844 of 2000 whereby the applicant-Jitubhai Bhurabhai Darbar who came to be tried for the offence under Section 138 of the Negotiable Instruments Act was ordered to be convicted and sentenced to suffer R.I. for six months and to pay Rs.50,000/- as compensation to the complainant-respondent no.2 under Section 357(3) of the Criminal Procedure Code., which was confirmed in appeal by the Jt.District Judge & Presiding Officer, 10th Fast Track Court, Nadiad in Criminal Appeal no.31/2001.

3. It is the case of the prosecution that the present petitioner had issued a cheque no.3861578 of Dena Bank, Nadiad to the complainant-respondent no.2 which on presentation was dishonoured. The complainant thereupon issued notice and finally a complaint was filed which was registered as Criminal Case no.2844 of 2000 before the learned 5th Jt.Civil Judge(S.D.), & J.M.F.C. Nadiad, who by his judgment and order dated 23-5-2001 convicted and sentenced the applicant as stated in para-1 of this judgment and the same was confirmed in appeal by the Jt.District Judge and Presiding Officer, 10th Fast Track Court, Nadiad in Criminal Appeal no.31/2001, giving rise to the present Criminal Revision Application.

4. Both the learned Advocates jointly submitted that the matter is settled between the parties and they have produced the terms of settlement dated 3-5-2005 entered into between the parties which is duly signed by their respective Advocates. The settlement terms is ordered to be taken on record. As per the terms of settlement, the present applicant-Jitubhai Bhurabhai Darbar has paid Rs.40,000/-to the complainant-respondent no.2 in full and final settlement. The respondent no.2 who is present in Court is identified by the learned Advocate Mr.R.D.Chauhan. Permission to compound the offence in view of the provisions of Section 147 of the Negotiable Instruments is prayed for.

5. It is recited in the terms of settlement that now there is no dispute between the parties, and hence, the offence be compounded. In that view of the matter, the parties are permitted to compound the offence in view of the provisions contained in Section 147 of the Negotiable Instruments Act. Consequently, this Criminal Revision Application deserves to be allowed.

6. In the result, this Criminal Revision Application is allowed. The judgment and order dated 23-5-2001 passed by the 5th Jt.Civil Judge, (S.D.), & J.M.F.C., Nadiad in Criminal Case no.2844 of 2000 and confirmed in appeal by the Jt. District Judge and Presiding Officer, 10th Fast Track Court, Nadiad is hereby quashed and set aside. The applicant-Jitubhai Bhurabhai Darbar is acquitted of the offence under Section 138 of the Negotiable Instruments Act. Rule is made absolute accordingly.

6.1. Fine, if any, paid by the applicant is ordered to be refunded. Direct service is permitted.

(M.D.Shah,J.)

stanley-mds.